



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

October 3, 2003

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2003-7012

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188719.

The City of Mesquite Police Department (the "department") received a request for information pertaining to a certain incident and for all information on four named individuals "going back 10 years." You argue that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First we note that the submitted information includes a search warrant and supporting affidavit. The affidavit to support the search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b); *see also* Open Records Decision No. 525 (1989). The submitted information indicates that a police officer executed the search warrant associated with the affidavit. Thus, the department must release the submitted search warrant affidavit, which we have marked, to the requestor.

Next, we note that the submitted information includes an arrest warrant and supporting affidavit. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately after the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified at Crim. Proc. Code art. 15.26). This provision makes the submitted arrest warrant and supporting affidavit expressly public. The exceptions found in the Public Information Act (the "Act") do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the department must release the arrest warrant and supporting affidavit, which we have marked, to the requestor.

Additionally, the submitted information includes information contained in a public court record. *See* Gov't Code § 552.022(a)(17). Therefore, as prescribed by section 552.022, these public court documents must be released to the requestor unless they are expressly confidential under other law. You claim sections 552.103 and 552.108, both discretionary exceptions under the Act, neither of which is considered "other law" that makes information confidential. *See* Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* 586 (1991) (governmental body may waive section 552.108). Therefore, those documents deemed public under section 552.022(a)(17) may not be withheld under section 552.103 or 552.108 of the Government Code.<sup>1</sup> You also raise section 552.101 as a possible exception to disclosure. This exception constitutes "other law" for purposes of section 552.022; therefore, we will consider the applicability of section 552.101 to the court documents.

Section 552.101 of the Act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 excepts certain information based on section 58.007(c) of the Family Code, specifically, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

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<sup>1</sup> Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue, including the court documents subject to section 552.022, involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information, which we have marked, is confidential pursuant to section 58.007(c) of the Family Code. The department must withhold the marked information under section 552.101 of the Government Code.

Additionally, portions of the requested information are excepted from disclosure based on the common law right to privacy which is encompassed by section 552.101 of the Government Code. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, there is a general request for all information "going back 10 years" concerning four individuals. In this case, we believe that those individuals' rights to privacy have been implicated. Thus, where the named individuals are possible suspects, arrestees or defendants, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* However, *Reporters Committee* does not apply where the requestor has provided specific information such as the date and location of an incident. We will, therefore, consider your arguments under section 552.108 for the remaining information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" if release of the information "would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). There are several documents that do not involve juvenile conduct and are, therefore, not confidential under section 58.007(c) of the Family Code. We have marked these documents. You indicate that these documents relate to a pending criminal investigation. Based upon this representation, we conclude that the release of the marked documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the marked information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must release the affidavit accompanying the executed search warrant under article 18.01(b) of the Code of Criminal Procedure. The department must release the arrest warrant and supporting affidavit under article 15.26 of the Code of Criminal Procedure. The department must withhold the information relating to juvenile conduct pursuant to section 58.007 of the Family Code. Any information naming the four individuals as suspects, arrestees or defendants must be withheld under section 552.101 of the Government Code, except for information related to the specific incident referenced in the request. Lastly, with the exception of basic information, the department may withhold the marked information under section 552.108(a)(1) of the Government Code. Any remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

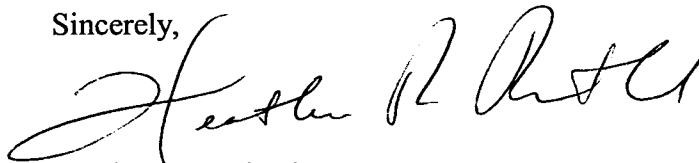
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather R. Rutland  
Assistant Attorney General  
Open Records Division

HRR/sdk

Ref: ID# 188719

Enc: Submitted documents

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(w/o enclosures)